

DEPARTMENT OF STATE REVENUE

04-20160439.LOF

Letter of Findings Number: 04-20160439
Use Tax
For Tax Years 2009-11

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Business was able to produce documentation and explanation showing that certain purchases were eligible for the agricultural exemption. Therefore, those purchases are not subject to use tax. One category of purchases was partially exempt.

ISSUE

I. Use Tax–Imposition.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-5-2; IC § 6-8.1-5-1; Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Graham Creek Farms v. Ind. Dept. of State Revenue, 819 N.E.2d 151 (Ind. Tax 2004); Guardian Automotive Trim, Inc. v. Ind. Dept. of Revenue, 811 N.E.2d 979 (Ind. Tax 2005); [45 IAC 2.2-3-4](#); [45 IAC 2.2-5-3](#); 21 U.S.C. § 1032; 9 C.F.R. § 590.422; 9 C.F.R. § 590.500; 9 C.F.R. § 590.502.

Taxpayer protests the imposition of use tax on certain transactions.

STATEMENT OF FACTS

Taxpayer is an Indiana business in the poultry/egg industry. As the result of an audit conducted in 2012, the Indiana Department of Revenue ("Department") determined that during the tax years 2009, 2010, and 2011, Taxpayer purchased some tangible personal property ("TPP") without paying sales tax at the time of purchase and without remitting use tax during the relevant year. The Department therefore issued proposed assessments for use tax, penalty, and interest for those years. Taxpayer timely protested a portion of the purchases determined to be subject to use tax and also paid the proposed assessments in order to toll the accrual of interest during the protest process. Due to a misunderstanding by the Department, the payment was determined to be a non-protest of the proposed assessments and the matter was not forwarded to the Department's Legal Division until mid-2016. Upon notification of the oversight, the Department's Legal Division scheduled an administrative hearing. This Letter of Findings results. Further facts will be supplied as required.

I. Use Tax–Imposition.

DISCUSSION

Taxpayer protests the imposition of use tax on certain purchases of TPP it made during the tax years 2009, 2010, and 2011. The Department determined that the purchases were not eligible for the agricultural exemption and therefore issued proposed assessments for use tax on those purchases. Due to the volume of purchases during the tax years, the Department and Taxpayer agreed to use a sample and projection method to determine a use tax compliance rate for the tax years. The Department then applied that compliance rate to the rate of sales and use taxes actually paid by Taxpayer for the tax years. Use tax was imposed on the difference between the amount of the compliance rate and the actual amount paid. Taxpayer states that TPP purchased and classified in four categories were exempt and so were not subject to use tax. Taxpayer therefore argues that the TPP in the four categories should be reclassified as exempt and that the use tax compliance rate should be recalculated and reapplied to all three tax years.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect.

As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[w]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

Sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

Use tax is imposed by IC § 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

[45 IAC 2.2-3-4](#) further explains:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, when tangible personal property is used, stored, or consumed in Indiana, use tax is due unless sales tax was paid at the time of the transaction.

Also of relevance is IC § 6-2.5-5-2, which states:

- (a) Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.
 - (b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:
 - (1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;
 - (2) the person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food and food ingredients or commodity production; and
 - (3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.
- (Emphasis added).

Therefore, if the TPP is used in the direct production, extraction, harvesting, or processing of agricultural commodities, it is exempt from sales tax under IC § 6-2.5-5-2.

In this case, Taxpayer protested the imposition of use tax on TPP used in four categories: 1) a manure building; 2) epoxy flooring in the egg laying facility; 3) a carton washer; and 4) pressure washers used to clean the egg laying facility. Regarding the first category, a manure building, Taxpayer explained that the manure building is used to store and dry poultry droppings in order to provide a more productive environment for the chickens as well as to make the droppings more marketable for subsequent sale.

The Department determined that the manure building was used to store the poultry manure without any processing or treatment of the manure prior to sale. [45 IAC 2.2-5-3](#) provides:

- (a) Definitions: Fertilizer. The term "fertilizer" means a commodity which contains one or more substances to increase the available plant food content of the soil and which becomes a part of the products grown therein.

Farmer. For definition of "farmer" as used in this regulation [\[45 IAC 2.2\]](#) refer to Regs. 6-2.5-5-1(010) [\[45 IAC 2.2-5-1\]](#).

Farming. The term "farming" means engaged in the commercial production of food or agricultural commodities as a "farmer".

(b) In general, purchases of tangible personal property by farmers are taxable. The exemptions provided by this regulation [\[45 IAC 2.2\]](#) apply only to seeds, fertilizers, fungicides, insecticides, and other tangible personal property to be directly used by the farmer in the direct production of food and agricultural commodities. This exemption is limited to "farmers".

(c) The state gross retail tax shall not apply to:

(1) Sales to farmers and to other persons occupationally engaged in the business of producing food and agricultural commodities for human, animal, and poultry consumption (either for sale or further use in producing such food and agricultural commodities for sale) of seeds, plants, fertilizers, fungicides, insecticides, and other tangible personal property to be directly used by the purchaser in the direct production of food and agricultural commodities.

(2) Sales to farmers of seeds, plants, fertilizers, fungicides, insecticides, and other tangible personal property to be directly used by the farmer in the direct production of food or agricultural commodities for human, animal, or poultry consumption either for sale or for further use in producing food and agricultural commodities for sale are exempt from tax. "To be directly used in the direct production of food or agricultural commodities for human, animal, or poultry consumption either for sale or for further use in producing food and agricultural commodities for sale," the property in question must have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces food or an agricultural commodity.

(3) Seeds and plants. Sales to farmers of seeds and plants for sale or for further use in producing food and agricultural commodities for sale are exempt from tax provided such seeds and plants are used directly in farming.

(4) Fertilizer. Sales to farmers of fertilizer are exempt from tax provided that such fertilizer is used directly in farming.

(5) Fungicides and insecticides. Sales to farmers of fungicides and insecticides are exempt from tax provided such items are used directly in farming.

(6) Sales to farmers of tangible personal property used to groom or treat poultry and animals used in the production of food, so as to preserve their health, (including property such as medicines, serums, dehorners, debeakers, hoof trimmers [sic.] hormones for productive animals, inoculation needles, and syringes) are exempt from tax.

(d) Non-exempt purchases:

(1) Other tangible personal property. Sales to farmers of other tangible personal property are taxable unless the property is used in direct production of food or agricultural commodities.

(2) Sales of beds, mattresses, kitchen equipment, recreation items, etc., used in conjunction with the operation of migrant labor camps are taxable. Such items are not used directly in farming.

(3) Sales to farmers of property to be incorporated into real estate in such a manner as to become part of the real estate are taxable. If the unit is directly used for manufacture or a process of manufacture, it is to be considered as personal property.

(4) Materials purchased for use in construction, reconstruction, alteration, remodeling, servicing, repairing, maintenance, or improvement of farm buildings incorporated into realty are taxable.

(5) Purchases of fences, fencing material, gates, posts, fence stretchers, and electric fence chargers are taxable.

(6) Purchases of watering tubs and troughs and tile for drainage are taxable.

(7) Tangible personal property purchased by a farmer for use in general farm maintenance of taxable items is taxable.

(8) Sales to farmers of tangible personal property to be used in managerial, sales, or other farm activities not directly related to the production of food are taxable. The following farm activities are not directly related to the production of food or agricultural commodities: farm management and administration; selling and marketing; exhibition of farm products; safety and fire prevention; illumination for farm buildings, transportation of animals, poultry, feed, fertilizer, etc., to the farm for use in farming; and transportation of animals, poultry, and other farm produce from the farm to market.

(9) Buildings which only protect the animals from adverse weather conditions are taxable.

(e) Exempt Purchases:

(1) Heating, cooling, and ventilation equipment for agricultural production is exempt when it is directly used in the direct agricultural production process provided that such equipment is directly used in the production process, i.e. has an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces food or agricultural commodities.

(2) Confinement buildings that confine animals in order to (1) maintain physical integrity of the product, (2) create and control the environment in order to facilitate production, and (3) function in conjunction with exempt machinery such as fans, thermostats, vents, cooling and heating systems, are exempt. In addition, in order to qualify for the exemption, the confinement building must serve a breeding, gestation, farrowing, and nursing or finishing function. For purposes of this exemption, confinement involves holding the animal within the confines of the building or an attached confined porch area.

(3) Fences, fencing materials, gates, posts, and electric fence charger (listed in [45 IAC 2.2-5-3\(d\)\(6\)](#) and [2.2-5-4\(c\)](#) [[45 IAC 2.2-5-4\(c\)](#)]) are exempt only if the same are purchased for use in confining livestock during the production processes of breeding, gestation, farrowing, calving, nursing, or finishing. Fencing materials are taxable if the fence is used to confine horses, ponies, donkeys, or pets not used in agricultural production. Fencing materials are also taxable if the fence is used only as a partition fence between adjoining landowners or as a means to keep wildlife, stray animals, or trespassers from entering cropland or farm premises.

(4) Purchases of feeding and watering equipment.
(Emphasis added).

In the course of the protest process, Taxpayer explained that removal of the manure from the building in which the chickens were located resulted in improved health of the chickens and so resulted in improved egg quality and quantity. Taxpayer also refers to a 2013 advisory letter from the Department to the Indiana State Poultry Association which states that a new manure barn used exclusively for the purpose of processing and handling manure would be exempt from Indiana sales tax. Therefore, Taxpayer argues, the manure building is part of an overall agricultural production process and is therefore exempt.

After review of the provisions of IC § 6-2.5-5-2(b)(3) and of [45 IAC 2.2-5-3\(c\)\(6\)](#), the Department does not agree that the manure barn qualified for the exemption since it did not directly gather, spread, or move the manure or directly affect the health of the poultry. . The equipment that moved the manure from the egg-laying facility to the manure barn directly moved the manure, but the barn did not. Therefore, the barn does not qualify for the agricultural exemption on that basis. However, in the protest process Taxpayer also explained that the manure building was used to dry the manure prior to sale for fertilizer purposes. As provided by [45 IAC 2.2-5-3\(a\)](#) fertilizer is an agricultural commodity and the drying process constituted the production of an agricultural commodity.

Of relevance is the Indiana Tax Court's opinion in *Graham Creek Farms v. Ind. Dept. of State Revenue*, 819 N.E.2d 151 (Ind. Tax 2004). In that case, the taxpayer made upgrades to a tobacco drying barn and the Department determined that there was no active role played by the barn or any equipment in the barn and so the barn and the equipment did not affect the production of the agricultural product. The court explained:

The evidence demonstrates that in the tobacco drying process, the proper circulation of air is essential to avoid "house burn." **[]Marketable tobacco is not produced until an eighty-pound stick of tobacco stalks is dried and essentially reduced to one and a half pounds of marketable tobacco. [] Clearly, the drying process has a direct effect on transforming unmarketable tobacco stalks into marketable tobacco; without the tobacco barn's effect, the tobacco stalks would rot and no marketable product would be produced.** See e.g., *Gen. Motors Corp. v. Indiana Dep't of State Revenue*, 578 N.E.2d 399, 404 (Ind. Tax Ct.1991) (determining that production ended when taxpayer placed products in their most marketable form), *aff'd*, 599 N.E.2d 588 (Ind.1992). **Accordingly, the Court concludes that the tobacco barn is integral and essential to the production process of producing marketable tobacco, and Graham is entitled for an exemption for the materials purchased to remodel its tobacco barn.**

Id. at 158-59 (internal notations omitted)(emphasis in original)(**emphasis added**).

As provided by [45 IAC 2.2-5-3\(b\)](#), TPP used to produce agricultural commodities is exempt from sales and use taxes. Since Taxpayer used the manure barn to both store and dry the manure, and since the storing of the manure is non-exempt activity and the drying of the manure constitutes an exempt agricultural production process as explained by the court in *Graham Creek Farms*, the materials used to construct the manure barn were fifty percent exempt and fifty percent taxable.

Regarding the epoxy flooring in the egg-laying facility and the pressure washers and carton washer, Taxpayer refers to several federal regulations regarding egg production requirements. In 1970 the United States Congress established the Egg Products Inspection Act ("the Act"), as provided by 21 U.S.C. § 1032. Taxpayer argues that the Act requires certain actions by egg producers and that these requirements are found under the provisions of 9 C.F.R. 590 et seq. Further, Taxpayer argues that these requirements result in the TPP listed under the remaining three categories qualifying for exempt status under Indiana statutes and regulations.

Specifically, Taxpayer argues that the epoxy flooring and washers are federally required egg production equipment as provided by 9 C.F.R. § 590.500(i), which states:

The floors, walls, ceiling, partitions, posts, doors, and other parts of all structures shall be of such materials, construction, and finish to permit their ready and thorough cleaning. The floors and curbing shall be watertight. (Emphasis added).

Also of relevance is 9 C.F.R. § 590.422, which provides:

Eggs and egg products found to be adulterated at official plants shall be condemned and, if no appeal be taken from such determination of condemnation, such articles shall be destroyed for human food purposes under the supervision of an inspector: Provided, That articles which may by reprocessing be made not adulterated need not be condemned and destroyed if so reprocessed under the supervision of an inspector and thereafter found to be not adulterated. If an appeal is requested, the eggs or egg products shall be appropriately marked and segregated pending completion of an appeal inspection. The appeal shall be at the cost of the appellant if the Administrator determines that the appeal is frivolous, as defined in § 590.370 (emphasis in original)(**emphasis added**).

The Department considered the epoxy flooring to be safety equipment for workers and therefore subject to sales tax as provided by [45 IAC 2.2-5-3\(d\)\(8\)](#). The Department considered the washers to constitute normal farm maintenance equipment and therefore subject to tax as provided by [45 IAC 2.2-5-3\(d\)\(4\)](#).

Taxpayer refers to 9 C.F.R. § 590.502, which provides:

- (a) Equipment and utensils used in processing shell eggs and egg products shall be of such design, material, and construction as will:
- (1) Enable the examination, segregation, and processing of such products in an efficient, clean, and satisfactory manner;
 - (2) Permit easy access to all parts to insure thorough cleaning and sanitizing. So far as is practicable, all such equipment shall be made of metal or other impervious material which will not affect the product by chemical action or physical contact.
- (b) Except as authorized by the Administrator, in new or remodeled equipment and equipment installations, the equipment and installation shall comply with the applicable 3-A or E-3-A Sanitary Standards and accepted practices currently in effect for such equipment.
- (c) New or replacement equipment or machinery (including any replacement parts) brought onto the premises of any official plant shall not contain liquid polychlorinated biphenyls (PCBs) in concentrations above 50 parts per million by weight of the liquid medium. This provision applies to both food processing and nonfood processing equipment and machinery, and any replacement parts for such equipment and machinery. Totally enclosed capacitors containing less than 3 pounds of PCBs are exempted from this prohibition. (Emphasis added).

Of relevance is the Indiana Tax Court's decision in *Guardian Automotive Trim, Inc. v. Ind. Dept. of Revenue*, 811 N.E.2d 979 (Ind. Tax 2005), in which the court provided:

In determining that Guardian's mask processing equipment did not qualify for the equipment exemption, the Department focused solely on the process of cleaning the masks. Nevertheless, Guardian's production process as a whole must be examined; it cannot be artificially broken down into its component parts. See *Indiana Dep't of State Revenue v. Cave Stone, Inc.*, 457 N.E.2d 520, 524 (Ind.1983). Consequently, the Department ignored the fact that **the manufacture of the automotive trim parts is inextricably linked to their proper electroplating. Proper electroplating can only be accomplished with periodic cleaning of the masks.**

Furthermore, the Department's assumption that mask processing halts production for "a substantial period of time" is contrary to the evidence presented at trial: neither party presented any evidence indicating that mask processing halts production for a "substantial amount of time." [] In fact, Guardian testified that while production halted for no more than five minutes at a time in order to change out the masks, the actual mask processing was performed in synchronization with the production process. [] In other words, while production halted momentarily to change the masks, production did not halt in order to process the masks.

The evidence in this case shows that Guardian's production process begins with the melting of the plastic

pellets, and ends when the completed automotive trim parts have been packaged for shipment to Guardian's customers. See IND. ADMIN. CODE tit. 45, r. 2.2-5-8(d) (1992 & 1996) (stating that production "begins at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the production has altered the item to its completed form, including packaging, if required" (emphasis added)). It is indisputable that the painting of the molded plastic parts is an integral part of Guardian's manufacture of the automotive trim parts: it is part of a continuous process by which the plastic is placed in its finished form as automotive trim components, ready for delivery to Guardian's customers. Accordingly, the masks—which are used to paint the plastic parts—are exempt. (See Trial Tr. at 83 (where the Department concedes that the masks are exempt).) In a similar vein, **the process of cleaning the masks is an integral part of Guardian's manufacture of the automotive trim parts: the cleaning of the masks is done specifically for the purpose of properly applying electroplate to the parts. If Guardian did not "clean" its masks, Guardian would only be able to produce 15 to 50 marketable automotive trim components; the rest would be rejected by Guardian's customers and therefore rendered worthless. Simply put, the masks cannot be used continuously without cleaning. Thus, the mask processing equipment, essential and integral to the overall production of Guardian's automotive trim components, is exempt under Indiana Code § 6-2.5-5-3.** Id. at 984-95. (internal notations omitted)(emphasis in original)(**emphasis added**).

Also of relevance, the Indiana Tax Court in Graham Creek Farms stated:

Graham claims it is entitled to exemptions for purchases of cleaning chemicals and supplies used "to clean parts of exempt equipment during the maintenance and repair thereof." (Pet'r Br. at 16; see also Pet'r Ex. A at 5, 13, 24.) The sale of tangible personal property to farmers is taxable unless the property is directly used in its agricultural production process. See [45 IAC 2.2-5-3\(d\)\(1\)](#). Corya explained at trial that when Graham finishes using a piece of equipment, it is brought in for maintenance and cleaned "even down [to] the tires." (Trial Tr. at 84.) **Graham, however, presents no evidence that this cleaning occurs during any production processes; therefore, it is not entitled to an exemption for cleaning supplies used in its shop.** See [45 IAC 2.2-5-4\(e\)](#) ("[t]he fact that an item is purchased for use on the farm does not necessarily make it exempt from tax").

Nevertheless, Graham is entitled to an exemption for the purchase of glass cleaner it used to keep the windows of its combine clean while harvesting crops. (See Pet'r Ex. A at 13; Pet'r Br. at 16). Corya explained: Basically, when you're combining soybeans it's a very dusty operation, and probably a half a dozen times a day you have to spray the[] front windows and side windows with the cleaner ... so that you can see to operate the equipment. (Trial Tr. at 84-85.)

The Court finds such testimony sufficient to conclude that the glass cleaner is used in the soybean production process. Furthermore, the glass cleaner also has an immediate effect on the article being produced. See IND. ADMIN. CODE tit. 45, r. 2.2-5-13(g)(1) (1992) (1996) (stating that "[t]he consumption of property has an immediate effect on the commodity being produced or on the machinery, tools, or equipment engaged in direct production of commodities if the consumption is an essential and integral part of an integrated process which produces food or an agricultural commodity"). **Indeed, without clear windows, the combine cannot be operated safely and the harvesting of soybeans from the field for further processing cannot occur.** Accordingly, Graham is entitled to an exemption for its purchase of glass cleaner. See [45 IAC 2.2-5-13\(a\)](#) (exempting the sale of tangible personal property as a material which is to be directly consumed in direct production by the purchaser in the business of producing agricultural commodities).

Graham Creek Farms, at 164-65, (emphasis in original)(**emphasis added**)

Therefore, the court in Graham Creek Farms explained that cleaning supplies used outside the production process were not eligible for the exemption while the window cleaner was eligible since it was used in the course of an integrated agricultural production process.

While the taxpayer in Guardian Automotive was seeking to qualify for the manufacturing exemption found under IC § 6-2.5-5-3(b) rather than the agricultural production exemption found under IC § 6-2.5-5-2(a), the wording of and exemption concepts of the two statutes are substantially similar. Also, the court in Graham Creek Farms explained that cleaning supplies used as part of an integrated agricultural production process are exempt when, without clean equipment, the agricultural production cannot occur as provided by [45 IAC 2.2-5-13\(a\)](#). In a manner analogous to the electroplating production process described in Guardian Automotive and in the same manner as the window cleaning supplies used in Graham Creek Farms, Taxpayer in the instant case was compelled to clean its facilities and equipment on an ongoing basis in order to produce a marketable product. When read together

with 9 C.F.R. § 590.500(i), 9 C.F.R. § 590.502(a) requires egg processing equipment and facilities to undergo regular and thorough cleaning. As provided by 9 C.F.R. § 590.422 eggs and egg products found to be adulterated at official plants shall be condemned and, if no appeal be taken from such determination of condemnation, such articles shall be destroyed for human food purposes under the supervision of an inspector. Therefore Taxpayer's compliance of the facilities' flooring, cleaning of the facilities, and sterilization in the case of the cartons, with the regulations associated with the Egg Products Inspection Act are required to produce a marketable product and are not routine maintenance. Rather, these activities and the TPP used to perform them are essential and integral parts of an integrated process as provided by the court in Guardian Automotive and in Graham Creek Farms. Like the cleaning procedures in Guardian Automotive and in Graham Creek Farms, the cleaning procedures in the instant case do not halt the egg production process. It is this agricultural production process which produces food or an agricultural commodity. Taxpayer in the instant case could not use the production equipment to produce marketable agricultural products (eggs) continuously without cleaning. The epoxy flooring, pressure washers, and carton washer are therefore not subject to sales and use taxes as provided by [45 IAC 2.2-5-3\(c\)\(2\)](#). The Department takes this opportunity to note that merely complying with a government regulation is not the determining factor in reaching this conclusion. Rather, the determining factor is that, because non-compliance results in the destruction of Taxpayer's product, production of Taxpayer's product is not possible without incorporating these items into its integrated production process.

In conclusion, Taxpayer has met its burden of proving the proposed assessments wrong with regards to the epoxy flooring, pressure washers, and carton washer, as required by IC § 6-8.1-5-1(c). Taxpayer has been sustained in part regarding the manure barn. Fifty percent of the use of the manure barn is for taxable storage purposes and fifty percent is used for exempt drying purposes. The Department will recategorize the purchases of pressure washer, carton washer, and epoxy flooring as exempt and the purchases relating to the manure barn as fifty percent taxable and will recalculate Taxpayer's compliance rate. The Department will then recalculate the amount of use tax, penalty, and interest which was originally determined to be due and will refund the excess amount of tax already paid by Taxpayer.

FINDING

Taxpayer's protest is sustained in part and denied in part, as provided above.

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An [html](#) version of this document.